

**Jack Zinman**  
General Attorney

SBC Services, Inc.  
1401 Eye Street, NW,  
Suite 400  
Washington, D.C. 20005  
Phone: 202-326-8911  
Fax: 202-408-8745



July 26, 2005

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW – Lobby Level  
Washington, D.C. 20554

Re: ***Notice of Ex Parte – Communications Assistance for Law Enforcement Act and  
Broadband Access and Services, ET Docket No. 04-295***

Dear Ms. Dortch:

On behalf of SBC Communications Inc. (SBC), Tom Hughes, Jan Price and the undersigned met with Julius Knapp, Geraldine Matise, Rodney Small, Jeff Goldthorp, Walter Johnston, and Jerome Stanshine (via telephone) of the Office of Engineering and Technology; Michael Goldsmith, Carol Simpson, Jennifer McKee (via telephone), and Cathy Zima (via telephone) of the Wireline Competition Bureau; Artie Lechtman of the International Bureau; and Gregory Vadas and John Spencer of the Wireless Telecommunications Bureau on Monday, July 25, 2005. During the course of the meeting, we discussed SBC's positions regarding the Commission's pending rulemaking on the applicability of the Communications Assistance for Law Enforcement Act to broadband Internet access services and Voice over Internet Protocol services. We also provided staff with the attached handout, summarizing our positions. All of the positions expressed by SBC were consistent with our previous filings in this docket.

Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

/s/ **Jack Zinman**

Attachment

cc: Julius Knapp  
Geraldine Matise  
Rodney Small  
Jeff Goldthorp  
Walter Johnston  
Jerome Stanshine  
Michael Goldsmith  
Carol Simpson  
Jennifer McKee  
Cathy Zima  
Artie Lechtman  
Gregory Vadas  
John Spencer

# CALEA

ET Docket No. 04-295



SBC – FCC Meeting  
July 25, 2005

# **SBC Supports Law Enforcement's Surveillance Efforts**

- SBC has a long history of cooperating with Law Enforcement and implementing court ordered intercepts.
- SBC enjoys an excellent working relationship with FBI field agents and local law enforcement agencies.
- In June 2004 and in accordance with our Flexible Deployment Plan jointly developed with the FBI, SBC was 100% compliant with all CALEA requirements.
- SBC maintains a 24/7 on-call Court Order Bureau which is the single point of contact for all law enforcement agencies.

# Intercept Profile

- In 2004, SBC provisioned 191 intercepts out of a total of 1,364 surveillance actions for law enforcement.
  - AOUSC's annual Wiretap Report notes that a total of 1,710 federal and state intercepts were authorized in 2004.
  - By comparison, according to FCC data there are a total of 397 million telephone, wireless and broadband lines in the U.S.
- Less than 5 percent of all surveillance actions provisioned by SBC were CALEA-enabled.
- *SBC has never turned away a legal request by law enforcement for a surveillance action.*

# Legal Analysis

- Any Commission determination that CALEA applies to broadband and/or VoIP services must be based on a solid legal rationale that can survive judicial review.
- The Commission must be mindful of the “information services” exclusion in CALEA. See Section 102(8)(C)(i).
- Reversal on appeal could be very disruptive to the communications industry.

# Managed & Non-Managed VoIP Services

- SBC urges the Commission not to pursue the “managed” v. “non-managed” dichotomy for determining which VoIP services are subject to CALEA.
- Whether a service is managed or non-managed has no direct bearing on whether the service satisfies CALEA’s substantial replacement test.
- Determining whether a service is managed or non-managed is difficult in practice.
  - Many services have both managed and non-managed aspects.
  - Technology will continue to evolve, making the managed v. non-managed dichotomy difficult to implement.

# Cost Recovery

- SBC urges the Commission to reaffirm that carriers are authorized to recover reasonable costs associated with CALEA implementation and legal intercepts performed at law enforcement's request.
  - **Omnibus Crime Control and Safe Streets Act (OCCSSA), 18 U.S.C. § 2518(4):**
    - Requires a service provider, in response to a court order, to furnish law enforcement “all information, **facilities**, and technical assistance necessary to accomplish the interception . . . .”
    - Mandates that such a service provider “**shall be compensated** therefore by [law enforcement] for reasonable expenses incurred in providing such **facilities** or assistance.”
  - **CALEA, Section 109(b)(2)**
    - Does not repeal section 2518(4) of OCCSSA.
    - Permits Attorney General to pay service providers for upgrades if compliance is not reasonably achievable.
  - **47 U.S.C. § 229(e)**
    - Does not repeal section 2518(4) of OCCSSA.
    - Provides a process for rate-regulated common carriers to obtain CALEA cost recovery.
- SBC spent over \$30M implementing CALEA functionality in its circuit-switched network, with no reimbursement from the funds administered by the Attorney General's office.



# Technical Requirements and Standards Development

- The Commission should take great care not to prematurely determine that CALEA capabilities are “reasonably available” in the IP environment.
- While SBC and the industry are working jointly, standards are not yet finalized for all platforms and technologies.
- Requirements, such as Call Identifying Information, are undefined for broadband access.
- Trusted Third Parties should not become a default or mandated substitution for standard setting.
- This proceeding is not the appropriate mechanism to determine “deficiency” in any existing or developing standards.

# Compliance Deadlines

- The Commission should not adopt its tentative conclusion that 90 days is sufficient time to become “substantially compliant” with CALEA requirements in the IP environment.
  - Standards will most likely not be completed by this proceeding’s conclusion.
  - Vendor solutions will not likely be available.
  - Historical CALEA implementation data for the PSTN provides a roadmap for the time required to develop and implement CALEA compliant capabilities.
- All commenters, including DOJ, agree that 90 days is unreasonable.
  - “DOJ concurs with commenters that the *Notice’s* proposed 90-day compliance deadline for newly-covered services is too short; “ DOJ Reply Comments at vi and 46.
- SBC supports TIA’s proposed 18-24 month implementation period.